

Memorandum 2010-43

**Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture
(Draft of a Tentative Recommendation)**

This memorandum recommences the Commission's work to clarify appellate jurisdiction of bail forfeiture. In 2007, the Commission issued a recommendation on the topic, but it was not enacted.

The memorandum begins by providing some background information on appellate jurisdiction, including jurisdiction of a bail forfeiture appeal. Next, the memorandum describes the Commission's previous recommendation to clarify jurisdiction of a bail forfeiture appeal. Finally, it proposes a new approach. The new approach is also presented in a draft of a tentative recommendation, which is attached.

The Commission and interested persons should consider the material discussed below, and review the attached draft. The Commission should determine whether to circulate the draft, with or without change, as a tentative recommendation.

BACKGROUND

In 2006, an appellate division of the superior court notified the Commission that appellate jurisdiction of bail forfeiture became unclear after trial court unification. See Letter from A. Cerul, Santa Clara County Superior Court Staff Attorney, Memorandum 2007-14, Exhibit pp. 1-4. Specifically, it became unclear when a bail forfeiture appeal belongs in the appellate division of the superior court as opposed to the court of appeal, and vice versa.

Pre-Unification Appellate Jurisdiction

Before unification, appellate jurisdiction depended on which trial court — municipal or superior — was being appealed from. Specifically, an appeal from the municipal court went to the appellate department of the superior court (now

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

known as the “appellate division” and slightly reconstituted), and an appeal from the superior court went to the court of appeal.

Because appellate jurisdiction depended on which trial court was being appealed from, appellate jurisdiction essentially depended on which trial court had jurisdiction over the underlying case. If the municipal court had jurisdiction over a case, the appellate division of the superior court had jurisdiction over the appeal. If the superior court had jurisdiction over a case, the court of appeal had jurisdiction over the appeal.

Civil Case

Jurisdiction over a civil case depended on the amount in controversy. In general, the municipal court had jurisdiction over a civil case involving \$25,000 or less, but the superior court had jurisdiction over a civil case involving more than \$25,000. Therefore, the appellate division of the superior court generally had jurisdiction over an appeal involving \$25,000 or less, and the court of appeal generally had jurisdiction over an appeal involving more than \$25,000.

Criminal Case

Jurisdiction over a criminal case depended on the underlying criminal charge. The municipal court had jurisdiction over a misdemeanor case. Therefore, the appellate department of the superior court had jurisdiction over an appeal from a misdemeanor case.

The superior court had jurisdiction over a felony case, beginning with the filing of (1) an indictment, following a grand jury investigation, or (2) an information, following a preliminary examination and legal commitment by a magistrate in the municipal court. An appeal from a felony case in the superior court went to the court of appeal.

Bail Forfeiture Case

An appeal from bail forfeiture is a civil matter. However, a bail forfeiture arises in a criminal case. (For more information about bail forfeiture, see page 1 of the attached draft of a tentative recommendation.)

Because a bail forfeiture arises in a criminal case, jurisdiction over the appeal did not depend on the amount in controversy, like other civil matters. See *Newman v. Superior Court*, 67 Cal. 2d 620, 623, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (amount in controversy not determinative of appellate jurisdiction of bail forfeiture). Instead, jurisdiction over the appeal depended on which court

ordered the bail forfeiture — i.e., which court was handling the underlying criminal proceeding at which the forfeiture occurred.

Because the municipal court handled a misdemeanor case, an appeal from forfeiture in such a case went to the appellate division of the superior court. The early stages of a felony case (i.e., before a legal commitment) were handled by a magistrate in the municipal court. Thus, an appeal from forfeiture at an early stage of a felony case went to the appellate department of the superior court. The later stages of a felony case (i.e., after a legal commitment or indictment) were handled by the superior court. Thus, an appeal from forfeiture at a later stage of a felony case went to the court of appeal.

Post-Unification Appellate Jurisdiction

To accommodate unification, provisions directing an appeal were revised. See, e.g., Code Civ. Proc. §§ 904.1, 904.2 & Comments; Penal Code §§ 1236, 1466 & Comments. The intent of the revisions was to preserve the path of appeals in the context of a unified trial court system. Generally, which court has jurisdiction over a civil appeal depends on the amount in controversy, and which court has jurisdiction over a criminal appeal depends on the underlying criminal charge.

The application of such provisions to a bail forfeiture appeal is unclear. The provisions do not clearly address a bail forfeiture appeal, due to its unique nature — that is, the appeal arises in a criminal case, but the appeal itself is a civil matter.

Consequently, courts do not handle jurisdiction of a bail forfeiture appeal in a uniform manner. For example, courts do not uniformly base jurisdiction on the amount in controversy, nor on the pre-unification appeal path (i.e., which court would have had appellate jurisdiction before unification). (For details on the lack of uniformity, see page 4 of the attached draft of a tentative recommendation.)

PREVIOUS RECOMMENDATION

In its study of the matter, the Commission was guided by its longstanding approach to revising statutes to reflect trial court restructuring: to avoid making any substantive change, other than that necessary to reflect trial court restructuring reforms. The Commission was further guided by a constitutional provision that preserves the appellate jurisdiction of the court of appeal as it existed on June 30, 1995. See Cal. Const. art. VI § 11(a) (“courts of appeal have

appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995”).

Accordingly, the Commission issued a recommendation that would have preserved the pre-unification path of a bail forfeiture appeal. (Specifically, the recommendation directed an appeal within the pre-unification jurisdiction of the appellate department of the superior court to the appellate division of the superior court, and directed an appeal within the pre-unification jurisdiction of the court of appeal to the court of appeal.)

The Commission’s recommendation was supported by the Judicial Council, but opposed by the bail industry and an attorney specializing in bail forfeiture appeals. The opposition disagreed with the recommendation to preserve the pre-unification path, and advocated that jurisdiction of a bail forfeiture appeal should be based on the amount in controversy, like other civil matters.

In 2008, a bill was introduced in the Legislature that would have implemented the Commission’s recommendation to preserve the pre-unification path of a bail forfeiture appeal. See AB 2166 (Tran). At its first hearing, the bill did not obtain enough votes to pass out of the committee. As a result, the matter remains in need of clarification.

NEW APPROACH

The staff has devised a new approach to clarify jurisdiction of a bail forfeiture appeal. Although it deviates from the Commission’s normal approach of avoiding substantive change other than that necessary to reflect trial court restructuring reforms, the staff believes the deviation is necessary to obtain enactment and to clarify an area that is a source of confusion and inconsistency.

The new approach is presented in the attached draft of a tentative recommendation. Generally, it would direct a bail forfeiture appeal based on the amount in controversy, like other civil matters. A subset of bail forfeiture appeals would be directed to the court of appeal, however, regardless of the amount in controversy. As mentioned above, the Constitution preserves the appellate jurisdiction of the court of appeal as it existed on June 30, 1995. Accordingly, a type of appeal that was within the appellate jurisdiction of the court of appeal as of that date must be sent to the court of appeal. As of that date, the court of appeal had jurisdiction over a bail forfeiture appeal that arose in the superior court (as opposed to the municipal court). Such an appeal arose in the superior

court only in a felony case, after the case had passed through (or bypassed) preliminary stages conducted by a magistrate in the municipal court. Thus, an appeal arising in a felony case after the legal commitment by a magistrate (or after an indictment) would be directed to the court of appeal, regardless of the amount in controversy.

The staff is optimistic about the new approach. It would generally treat a bail forfeiture appeal like other civil matters, addressing a key concern expressed by opposition to the Commission's previous approach. Additionally, the new approach is likely to be acceptable to the courts. The staff at the Administrative Office of the Courts has informally communicated to us that a committee of appellate jurists approves of the general concept behind the new approach.

NEXT STEP

The Commission and interested persons should review the attached draft of a tentative recommendation. **At its next meeting, the Commission should decide whether to adopt the draft for circulation as a tentative recommendation, with or without change.**

Respectfully submitted,

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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TENTATIVE RECOMMENDATION

Appellate Jurisdiction of Bail Forfeiture

October 2010

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission may consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

In the past decade, the trial court system has been dramatically restructured, necessitating revision of hundreds of code provisions. As a result of trial court restructuring and related amendments to provisions that govern an appeal, jurisdiction of a bail forfeiture appeal became unclear.

In this tentative recommendation, the Commission proposes legislation that would clarify jurisdiction of a bail forfeiture appeal. Under the proposed legislation, jurisdiction of a bail forfeiture appeal would generally depend on the amount in controversy. Like other civil appeals, a bail forfeiture appeal involving more than \$25,000 would go to the court of appeal. Similarly, a bail forfeiture appeal involving \$25,000 or less would generally go to the appellate division of the superior court. However, a bail forfeiture appeal arising in a later stage of a felony case would go to the court of appeal, regardless of the amount in controversy. This exception is necessary to comply with a constitutional provision that preserves the appellate jurisdiction of the court of appeal as it existed on June 30, 1995.

The Commission is continuing its work on trial court restructuring and plans to address other subjects in future recommendations.

This recommendation was prepared pursuant to Government Code Sections 70219 and 71674 and Resolution Chapter 98 of the Statutes of 2009.

TRIAL COURT RESTRUCTURING: APPELLATE JURISDICTION OF BAIL FORFEITURE

1 When a criminal defendant has been released on bail¹ and then fails to appear in
2 court when required, the bail may subsequently be forfeited according to a
3 statutory procedure.² An order relating to bail forfeiture may be appealed.³

4 Due to reforms that restructured the trial court system, it is unclear when a bail
5 forfeiture appeal is to be filed in the court of appeal and when such an appeal is to
6 be filed in the appellate division of the superior court.⁴

1. Bail may be posted by a surety, contracting with the government to either secure the defendant's presence when lawfully required or forfeit bail. Penal Code §§ 1268-1269, 1276, 1276.5, 1287, 1458-1459; *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 657, 93 P.3d 1020, 16 Cal. Rptr. 3d 76 (2004) (citing *People v. Ranger Ins. Co.*, 31 Cal. App. 4th 13, 22, 36 Cal. Rptr. 2d 807 (1994)).

2. See Penal Code §§ 1305-1306. If the defendant fails to appear when lawfully required (for example, for arraignment, trial, judgment, etc.), "without sufficient excuse," a court must declare the bail forfeited (hereafter, a "bail forfeiture declaration order"). Penal Code § 1305(a). The bail forfeiture declaration order is not an actual forfeiture, but an initial step in forfeiture proceedings. *People v. Sur. Ins. Co.*, 82 Cal. App. 3d 229, 236-37, 147 Cal. Rptr. 65 (1978). Following the bail forfeiture declaration order, the surety is given notice of the defendant's absence. Penal Code § 1305(b) (notice required for deposits over \$400). If the surety secures the defendant's presence within a 180-day period, the court must vacate the bail forfeiture declaration order. Penal Code § 1305(c). However, if the defendant fails to appear without sufficient excuse, the court must enter summary judgment against the surety (hereafter, "bail forfeiture summary judgment"). Penal Code §§ 1305.1 (court with belief of sufficient excuse for absence may extend time period), 1306(a) (court shall enter summary judgment against bondsman). For further detail on bail forfeiture procedures, see *People v. Int'l Fid. Ins. Co.*, 151 Cal. App. 4th 1056, 60 Cal. Rptr. 3d 355 (2007).

3. A bail forfeiture declaration order may be challenged by a motion to vacate. See Penal Code § 1305; *People v. Hodges*, 205 Cal. 476, 478, 271 P. 897 (1928); 6 B. Witkin, *California Criminal Law Criminal Appeal* § 74, at 319 (3d ed. 2000). The order granting or denying the motion to vacate the bail forfeiture declaration order may be appealed. *People v. Wilcox*, 53 Cal. 2d 651, 654-55, 349 P. 2d 522, 2 Cal. Rptr. 754 (1960) (citing Code Civ. Proc. § 963 and *Howe v. Key Sys. Transit Co.*, 198 Cal. 525, 531, 246 P. 39 (1926)).

A bail forfeiture summary judgment against the surety is a consent judgment. See *Am. Contractors*, 33 Cal. 4th at 663-64. When the judgment is voidable because it was improperly entered, the judgment may be challenged by an appeal or a motion to set aside the order. *Id.* at 663-65; see also *People v. Allegheny Cas. Co.*, 41 Cal. 4th 704, 716 n.7, 161 P.3d 198, 61 Cal. Rptr. 3d 689 (2007).

An order relating to bail forfeiture may also be challenged by an extraordinary writ. See, e.g., *Newman v. Superior Court*, 67 Cal. 2d 620, 621, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (issuing writ of mandate). Because the jurisdiction of an extraordinary writ tracks appellate jurisdiction, there is no need for a special provision regarding a challenge in the form of an extraordinary writ. See Cal. Const. art. VI, § 10 ("The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction."); Code Civ. Proc. §§ 85, 904.1, 904.2, 1068(b), 1085(b), 1103(b).

4. See *People v. Ranger Ins. Co.*, No. H030919, 2007 WL 2175059, at *2 n.5 (Cal. Ct. App. July 30, 2007) (unpublished decision) ("After unification ... the proper appellate path of bail bond forfeiture proceedings ... seems unclear and is in need of legislative clarification."); Letter from Alex Cerul, Santa Clara County Superior Court Staff Attorney, to California Law Revision Commission (October 5, 2006) (Commission Staff Memorandum 2007-14 (April 18, 2007), Exhibit pp. 1-4 (requesting clarifying

The Law Revision Commission is responsible for recommending revisions to the codes to reflect trial court restructuring.⁵ The Commission's traditional approach to this work has been to avoid making any substantive change, other than that necessary to reflect trial court restructuring reforms. That approach guided a previous Commission recommendation to clarify appellate jurisdiction of bail forfeiture,⁶ but legislation to implement that recommendation was not enacted.⁷ Therefore, in order to obtain the needed clarification, the Commission recommends a new approach to this topic.

Trial Court Unification

One of the trial court restructuring reforms was unification of the trial courts. The process of unification began in 1998 after California voters approved a measure permitting the municipal and superior courts in each county to unify.⁸ The

legislation) (available from the Commission, www.clrc.ca.gov); see also *infra* notes 21-23 and accompanying text.

5. Gov't Code §§ 70219, 71674. The Commission has recommended revisions to hundreds of code provisions in response to this directive. Almost all of the recommended reforms have been enacted. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51 (1998) (hereafter, *Revision of Codes*), implemented by 1998 Cal. Stat. ch. 931; 1999 Cal. Stat. ch. 344; *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm'n Reports 657 (1999) (hereafter, *Report on Chapter 344*), implemented by 1999 Cal. Stat. ch. 344; *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002) (hereafter, *Trial Court Restructuring: Part 1*), implemented by 2002 Cal. Stat. ch. 784 & ACA 15, approved by the voters Nov. 5, 2002 (Proposition 48); *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm'n Reports 169 (2003) (hereafter, *Trial Court Restructuring: Part 2*), implemented by 2003 Cal. Stat. ch. 149; *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm'n Reports 305 (2006), implemented by 2007 Cal. Stat. ch. 43; *Statutes Made Obsolete by Trial Court Restructuring: Part 4*, 37 Cal. L. Revision Comm'n Reports 171 (2007), implemented by 2008 Cal. Stat. ch. 56; *Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction*, 37 Cal. L. Revision Comm'n Reports 195 (2007), implemented by 2008 Cal. Stat. ch. 56; *Statutes Made Obsolete by Trial Court Restructuring: Part 5*, ___ Cal. L. Revision Comm'n Reports ___ (2009), implemented by 2010 Cal. Stat. ch. 212, §§ 2, 3, 6, 7, 8, 10, 11, 12.

This directive to revise the codes follows an earlier legislative assignment in which the Commission made recommendations on the constitutional revisions necessary to implement trial court unification. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994) (hereafter, *Constitutional Revision*); *Trial Court Unification: Transitional Provisions for SCA 3*, 24 Cal. L. Revision Comm'n Reports 627 (1994).

6. See 37 Cal. L. Revision Comm'n Reports 149 (2007). The Commission's recommendation would have preserved the pre-unification path of a bail forfeiture appeal.

7. See AB 2166 (Tran), introduced in 2008.

8. The measure permitted the municipal and superior courts in each county to unify on a majority vote by the municipal court judges and a majority vote by the superior court judges in the county. Former Cal. Const. art. VI, § 5(e); 1996 Cal. Stat. res. ch. 36 (SCA 4), approved by the voters June 2, 1998 (Proposition 220).

Other major trial court restructuring reforms were:

- State, instead of local, funding of trial court operations. See 1997 Cal. Stat. ch. 850; Gov't Code §§ 77000-77655.

1 same year, the codes were revised on Commission recommendation to
2 accommodate unification — that is, to make the statutes workable in a county in
3 which the municipal and superior courts decided to unify.⁹

4 By 2001, the trial courts in each county had unified, and the municipal courts
5 were subsumed into a unified superior court.¹⁰ Further revisions of the codes were
6 made on Commission recommendation in 2002 and 2003 to reflect that municipal
7 courts no longer existed.¹¹ After unification and related amendments to provisions
8 that govern an appeal, jurisdiction of a bail forfeiture appeal became unclear.

9 **Appellate Jurisdiction of Bail Forfeiture**

10 Although a bail forfeiture arises in a criminal case, it is a civil matter.¹² The
11 provisions that govern a civil appeal involving a monetary sum generally base
12 jurisdiction on the amount in controversy. Generally, the appellate division of the
13 superior court has jurisdiction of an appeal from a civil case involving \$25,000 or
14 less,¹³ and the court of appeal has jurisdiction of an appeal from a civil case
15 involving more than \$25,000.¹⁴

16 It is not clear, however, that such provisions govern a bail forfeiture appeal.¹⁵
17 Jurisdiction of a bail forfeiture appeal has not historically been based on the
18 amount in controversy (i.e., the amount of bail).¹⁶ Before unification, jurisdiction
19 of such an appeal was based on which court ordered the forfeiture.¹⁷ Forfeiture

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- Enactment of the Trial Court Protection and Governance Act, which established a new personnel system for trial court employees. See 2000 Cal. Stat. ch. 1010; Gov't Code §§ 71600-71675.

9. *Revision of Codes*, *supra* note 5; see also 1999 Cal. Stat. ch. 344; *Report on Chapter 344*, *supra* note 5.

10. The courts in Kings County were the last to unify, on February 8, 2001.

11. See *Trial Court Restructuring: Part 1*, *supra* note 5; *Trial Court Restructuring: Part 2*, *supra* note 5.

12. See *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 657, 93 P.3d 1020, 16 Cal. Rptr. 3d 76 (2004) (citing *People v. Wilcox*, 53 Cal. 2d 651, 654, 349 P. 2d 522, 2 Cal. Rptr. 754 (1960)). Consequently, certain rules governing civil actions, such as the time to file a notice of appeal, apply to a bail forfeiture appeal. *People v. United Bonding Ins. Co.*, 272 Cal. App. 2d 441, 442, 77 Cal. Rptr. 310 (1969) (civil rules for time to file notice of appeal apply to bail forfeiture case).

13. See Code Civ. Proc. §§ 85 (limited civil case is generally one in which amount in controversy is not more than \$25,000), 904.2 (appeal of limited civil case is to appellate division of superior court).

14. See Code Civ. Proc. §§ 85 (limited civil case is generally one in which amount in controversy is not more than \$25,000), 904.1 (appeal of case other than limited civil case is to court of appeal).

15. See *infra* notes 20-23 and accompanying text.

16. *Newman v. Superior Court*, 67 Cal. 2d 620, 621-623, 432 P.2d 972, 63 Cal. Rptr. 284 (1967); see, e.g., *County of Los Angeles v. Am. Bankers Ins. Co.*, 202 Cal. App. 3d 1291, 1293, 1297, 249 Cal. Rptr. 540 (1988) (court of appeal heard bail forfeiture appeal involving failure to appear before superior court, even though bail amount was less than court of appeal's jurisdictional threshold at that time).

17. *Newman*, 67 Cal. 2d at 621-23. In an unpublished opinion lacking precedential value, the Sixth District Court of Appeal provided a nice summary of pre-unification appellate jurisdiction of bail forfeiture. See *People v. Ranger Ins. Co.*, No. H030919, 2007 WL 2175059, at *2 n.5 (Cal. Ct. App. July 30, 2007) (unpublished decision). The court stated:

1 ordered by the municipal court was appealed to the appellate department of the
2 superior court.¹⁸ Forfeiture ordered by the superior court was appealed to the court
3 of appeal.¹⁹

4 Since the trial courts consolidated into a unified superior court, there is some
5 confusion over when a bail forfeiture appeal belongs in the appellate division of
6 the superior court, and when such an appeal belongs in the court of appeal.²⁰ For
7 example, courts do not uniformly apply to a bail forfeiture appeal the provisions
8 governing jurisdiction of a civil appeal.²¹ Nor do courts uniformly direct a bail
9 forfeiture appeal along its pre-unification path.²² And in at least one case, the bail

Before unification, bond forfeiture ordered by the municipal court was appealed to the appellate department of the superior court and forfeiture ordered by the superior court was appealed to the court of appeal, regardless of the amount of the bond. This was true despite the civil nature of bail bond proceedings.

18. Former Cal. Const. art. VI § 11 (added Nov. 8, 1966) (appellate jurisdiction of superior court in causes statutorily prescribed as arising in municipal court); former Code Civ. Proc. §§ 77(e) (1984 Cal. Stat. ch. 704, § 1), 904.2 (1990 Cal. Stat. ch. 1305, § 5) (appealable orders from municipal court); see, e.g., *Newman*, 67 Cal. 2d at 621, 623-25 (determining that bail forfeiture order by magistrate in municipal court at preliminary examination is order of that court, and ordering appellate department of superior court to accept appeal from such order).

19. Former Cal. Const. art. VI § 11 (added Nov. 8, 1966) (appellate jurisdiction of court of appeal when superior court has original jurisdiction); former Code Civ. Proc. § 904.1 (1993 Cal. Stat. ch. 456, § 12) (appealable orders from superior court); see, e.g., *Am. Bankers*, 202 Cal. App. 3d at 1297.

20. See *supra* note 4.

21. Generally, under those provisions, an appeal involving an amount in controversy of \$25,000 or less is taken to the appellate division of the superior court. Code Civ. Proc. §§ 85, 904.2. If the appeal involves an amount in controversy exceeding \$25,000, the appeal is taken to the court of appeal. Code Civ. Proc. §§ 85, 904.1.

Some courts do not apply those provisions. For example, several appeals involving bail of \$25,000 or less have been decided by the court of appeal. See, e.g., *People v. Bankers Ins. Co.*, 2008 WL 458669 (6th Dist.) (unpublished decision) (appeal from forfeiture of bail less than \$25,000 taken to court of appeal instead of appellate division of superior court); *People v. Ranger Ins. Co.*, 2007 WL 2876092 (6th Dist.) (unpublished decision) (same); *People v. Lincoln Gen'l Ins. Co.*, 2007 WL 2258284 (5th Dist.) (unpublished decision) (same); *People v. Granite State Ins. Co.*, 2003 WL 21227856 (2d Dist.) (unpublished decision) (same); *People v. Accredited Sur. & Cas. Co.*, 2003 WL 1542116 (6th Dist.) (unpublished decision) (same).

Unlike the above cases, a bail forfeiture appeal recently decided by the California Supreme Court followed a path consistent with the jurisdictional amount of the respective courts. The appeal involved bail forfeiture of \$35,000, and had first been taken to (and decided by) the court of appeal. See *People v. Indiana Lumbermens Mutual Insurance Co.*, 49 Cal. 4th 301, 304, 306, 231 P.3d 909, 110 Cal. Rptr. 3d 4 (2010). However, because the basis for jurisdiction of the court of appeal was not an issue before the Court, the case is not determinative of the issue needing clarification.

22. Some bail forfeiture appeals that depart from the pre-unification path involve bail forfeiture in a felony case at a proceeding before the filing of an information. Before unification, a forfeiture at such a proceeding would have been ordered by a magistrate sitting in the municipal court. See *infra* note 31. Because the forfeiture occurred in the municipal court, the appeal would have been to the appellate department of the superior court (now known as the “appellate division” and slightly reconstituted). See *supra* note 18 and accompanying text. However, after unification, there are several examples in which the appeal has not been to the appellate division of the superior court, but has instead been to the court of

forfeiture appeal followed neither the provisions governing a civil appeal nor the pre-unification path.²³ Legislation is needed to resolve the confusion.²⁴

Clarification of the Proper Jurisdiction

The Commission recommends legislation that would treat jurisdiction of a bail forfeiture appeal like other appeals of a civil nature, to the greatest extent possible within constitutional constraints.²⁵ The recommended legislation would thus generally direct a bail forfeiture appeal based on the amount in controversy. The court of appeal would have jurisdiction of a bail forfeiture appeal involving more than \$25,000.²⁶ Similarly, the appellate division of the superior court would generally have jurisdiction of a bail forfeiture appeal involving \$25,000 or less. However, one subset of bail forfeiture appeals, regardless of the amount in controversy, would be directed to the court of appeal.²⁷ The Constitution protects the appellate jurisdiction of the courts of appeal as it existed on June 30, 1995.²⁸ Accordingly, a bail forfeiture appeal within the appellate jurisdiction of the court of appeal as of that date must remain within the jurisdiction of the court of appeal.

appeal. See, e.g., *County of Los Angeles v. Int'l Fid. Ins. Co.*, 2009 WL 215147 (2d Dist.); *People v. Lincoln Gen. Ins. Co.*, 2008 WL 2690761 (4th Dist.); *People v. Ranger Ins. Co.*, 135 Cal. App. 4th 820, 37 Cal. Rptr. 3d 575 (4th Dist. 2005); *People v. Int'l Fid. Ins. Co.*, 92 Cal. App. 4th 470, 112 Cal. Rptr. 2d 1 (2d Dist. 2001) (criminal trial proceedings in this case appear to have begun before unification, but appeal was taken after unification.)

Other bail forfeiture appeals that depart from the pre-unification path involve bail forfeiture in a misdemeanor case. Before unification, a forfeiture in such a case would have been ordered by the municipal court. See former Penal Code § 1462(a) (1991 Cal. Stat. ch. 613, § 8); *In re Joiner*, 180 Cal. App. 2d 250, 254-255, 4 Cal. Rptr. 667 (1960) (municipal court jurisdiction over misdemeanor). Because the forfeiture would have occurred in municipal court, the appeal would have been to the appellate department of the superior court. See *supra* note 18 and accompanying text. After unification, instead of going to the appellate division of the superior court, some of these appeals have been to the court of appeal. See, e.g., *County of Los Angeles v. Ranger Ins. Co.*, 2008 WL 787717 (2d. Dist.); *People v. Safety Nat'l Cas. Corp.*, 150 Cal. App. 4th 11, 57 Cal. Rptr. 3d 659 (5th Dist. 2007); *People v. Alistar Ins. Co.*, 115 Cal. App. 4th 122, 9 Cal. Rptr. 3d 497 (4th Dist. 2003).

23. See, e.g., *People v. Ranger Ins. Co.*, 145 Cal. App. 4th 23, 51 Cal. Rptr. 3d 326 (2d Dist. 2006). The appeal involved forfeiture of bail less than \$25,000 by a magistrate at a preliminary proceeding on a felony charge. *Ranger*, 145 Cal. App. 4th at 25-26. If the jurisdictional limits governing civil appeals had been applied, the appeal would have been taken to the appellate division of the superior court, not the court of appeal. See Code Civ. Proc. §§ 85, 904.2. Similarly, if the pre-unification path had been followed, the appeal would have been taken to the appellate division of the superior court, not the court of appeal. See *supra* note 22.

24. See *supra* note 4.

25. See proposed Penal Code § 1305.5 *infra*; see also proposed amendment to Penal Code § 1306(e)(2) *infra*.

26. See proposed Penal Code § 1305.5(a) & (c) *infra*.

27. See proposed Penal Code § 1305.5(b) *infra*.

28. See Cal. Const. art. VI § 11(a) (“courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995”).

On that date, the court of appeal had jurisdiction of an appeal from bail forfeiture ordered by the superior court (as opposed to the municipal court).²⁹ Accordingly, an appeal from bail forfeiture that would have arisen in the superior court on that date must continue to be sent to the court of appeal. An appeal from bail forfeiture would have arisen in the superior court on that date only in a later stage of a felony case³⁰ — specifically, after an indictment or after completion of proceedings (e.g., the preliminary examination) that were conducted by a magistrate in the municipal court³¹ (or after bypassing completion of such proceedings by a plea of guilty or no contest³²). Thus, a bail forfeiture appeal that arises in a later stage of a felony case must continue to be sent to the court of

29. See *supra* notes 16-19 and accompanying text.

30. The superior court had jurisdiction over a felony case, which included a misdemeanor committed in connection with a felony. See Penal Code §§ 691(f) (“‘Felony case’ means a criminal action in which a felony is charged and includes a criminal action in which a misdemeanor or infraction is charged in conjunction with a felony”), 954; *People v. Leney*, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court jurisdiction over properly joined misdemeanor); 11 B. Witkin, *California Criminal Law Jurisdiction & Venue* § 14, at 102 (3d ed. 2000) (citing Cal. Const. art. VI, § 10 and Penal Code § 1462(a) to deduce superior court had original jurisdiction over felony). The superior court retained jurisdiction over connected misdemeanor charges even if the felony charges were eliminated before trial. *People v. Clark*, 17 Cal. App. 3d 890, 897-98, 95 Cal. Rptr. 411 (1971).

31. In the absence of a plea of guilty or no contest, a felony is prosecuted in superior court upon either an indictment or an information. See Cal. Const. art I, § 14; Penal Code §§ 739, 872; see also Penal Code § 859a (plea). Prosecution of a felony by information, rather than indictment, was (and still is) preceded by a preliminary examination before a magistrate. See Cal. Const. art. I, § 14; Penal Code §§ 738-739, 806, 872. As of June 30, 1995, such preliminary proceedings were conducted by a magistrate in the municipal court. See Cal. Const. art. I, § 14; Penal Code §§ 738-739, 806, 859, 872, 976; *People v. Thompson*, 50 Cal. 3d 134, 155, 785 P.2d 857, 266 Cal. Rptr. 309 (1990); *Lempert v. Superior Court*, 112 Cal. App. 4th 1161, 1168, 5 Cal Rptr. 3d 700 (2003); *People v. Valdez*, 33 Cal. App. 4th 1633, 1637, 39 Cal. Rptr. 818 (1995); see also Uelmen, *California Criminal Procedure and Trial Court Unification* (March 2002), at 2; *California Criminal Law Practice and Procedure Arraignment* § 6.10, at 144-45, *Preliminary Hearings* § 8.1, at 188-89; *California Judges Benchbook: Criminal Pretrial Proceedings, Commencing the Action* § 1.1, at 3.

32. If a plea of guilty or no contest to a felony charge was made at a proceeding before a magistrate, the magistrate was to certify the case to a judge in either the municipal court or the superior court for judgment. See former Penal Code § 859a; 1992 Cal. Stat. ch. 78, § 1. Accordingly, a bail forfeiture at a sentencing hearing could have occurred in either the municipal or superior court. The appeal from such a forfeiture thus could have been to either the appellate department of the superior court or to the court of appeal. Thus, jurisdiction over an appeal from such a forfeiture did not rest exclusively with one court, but rather fluctuated depending on the court to which the magistrate had certified the case. However, because the appeal involves a felony case (which fell within the original jurisdiction of the superior court), and because the appeal was within the jurisdiction of the court of appeal when the forfeiture had occurred at a sentencing hearing in superior court, the appeal seems to fall within the category of causes that may not constitutionally be removed from the appellate jurisdiction of the court of appeal. See 4 B. Witkin, *California Criminal Law, Jurisdiction and Venue* § 14, at 102 (3d ed. 2000) (citing Cal. Const. art. VI, Section 10 and Penal Code Section 1462 to deduce superior court original jurisdiction over felony). To avoid an unconstitutional reduction of the appellate jurisdiction of the court of appeal, the recommended legislation would direct a bail forfeiture appeal arising at (or after) a sentencing hearing to the court of appeal. See proposed Penal Code § 1305.5 *infra*; see also proposed amendment to Penal Code § 1306(e)(2) *infra*.

1 appeal, due to the constitutional provision preserving the historical jurisdiction of
2 the court of appeal.³³ The recommended legislation would therefore direct such an
3 appeal to the court of appeal, regardless of the amount in controversy (i.e., even if
4 the amount in controversy does not exceed \$25,000).

5 To summarize, the recommended legislation would generally direct a bail
6 forfeiture appeal based on the amount in controversy, like other civil appeals.
7 Regardless of the amount in controversy, however, the recommended legislation
8 would direct a bail forfeiture appeal arising in a later stage of a felony case to the
9 court of appeal, in order to preserve its historical appellate jurisdiction as
10 constitutionally required.

11 **Effect of the Recommended Legislation**

12 The recommended legislation would help to prevent disputes and confusion over
13 the proper jurisdiction of a bail forfeiture appeal. That would benefit the public by
14 (1) reducing litigation expenses of the People and of other parties to a bail
15 forfeiture proceeding, and (2) conserving judicial resources. The recommended
16 legislation should be promptly enacted to achieve these results.

33. Cal. Const. art. VI, § 11(a) (“courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995”).

PROPOSED LEGISLATION

1 SEC. _____. Section 1305.5 is added to the Penal Code, to read:

2 1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of Civil
3 Procedure, the following rules apply to an appeal from an order of the superior
4 court on a motion to vacate a bail forfeiture declared under Section 1305:

5 (a) If the amount in controversy exceeds twenty-five thousand dollars (\$25,000),
6 the appeal is to the court of appeal and shall be treated as an unlimited civil case.

7 (b) Except as provided in subdivision (c), if the amount in controversy does not
8 exceed twenty-five thousand dollars (\$25,000), the appeal is to the appellate
9 division of the superior court and shall be treated as a limited civil case.

10 (c) If the bail forfeiture was in a felony case, or in a case in which both a felony
11 and a misdemeanor were charged, and the forfeiture occurred at or after the
12 sentencing hearing or after the indictment or the legal commitment by a
13 magistrate, the appeal is to the court of appeal and shall be treated as an unlimited
14 civil case.

15 **Comment.** Section 1305.5 is added to clarify the appellate jurisdiction of a bail forfeiture case.
16 Such jurisdiction is generally based on the amount in controversy, with cases involving larger
17 amounts heard by the court of appeal and ones involving smaller amounts heard by the appellate
18 division of the superior court, like other civil appeals.

19 Subdivision (a) directs bail forfeiture appeals that involve more than \$25,000 to the court of
20 appeal.

21 Subdivision (b) directs bail forfeiture appeals that involve \$25,000 or less to the appellate
22 division of the superior court, subject to a constitutional principle reflected in subdivision (c).

23 Subdivision (c) directs certain bail forfeiture appeals that involve \$25,000 or less to the court of
24 appeal. These types of appeals were historically within the jurisdiction of the court of appeal, and
25 thus cannot constitutionally be removed from its jurisdiction. See Cal. Const. art. VI § 11(a)
26 (“courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in
27 causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995”);
28 *Newman v. Superior Court*, 67 Cal. 2d 620, 623, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (amount
29 of bail not determinative of appellate jurisdiction relating to bail forfeiture order); *People v. Topa*
30 *Ins. Co.*, 32 Cal. App. 4th 296, 38 Cal. Rptr. 2d 167 (1995) (court of appeal heard bail forfeiture
31 appeal involving failure to appear before superior court in felony case, even though bail was less
32 than jurisdictional limit of municipal court); *County of Los Angeles v. Am. Bankers Ins. Co.*, 202
33 Cal. App. 3d 1291, 249 Cal. Rptr. 540 (1988) (same); see also *People v. Leney*, 213 Cal. App. 3d
34 265, 268, 261 Cal. Rptr. 541 (1989) (superior court has jurisdiction to try remaining misdemeanor
35 even if felony charge eliminated before trial); *People v. Clark*, 17 Cal. App. 3d 890, 897-98, 95
36 Cal. Rptr. 411 (1971) (same).

37 See also Section 691 (“felony case” and “misdemeanor or infraction case” defined).

38 SEC. _____. Section 1306 of the Penal Code is amended to read:

39 1306. (a) When any bond is forfeited and the period of time specified in Section
40 1305 has elapsed without the forfeiture having been set aside, the court which has
41 declared the forfeiture, ~~regardless of the amount of the bail~~, shall enter a summary
42 judgment against each bondsman named in the bond in the amount for which the
43 bondsman is bound. The judgment shall be the amount of the bond plus costs, and

1 notwithstanding any other law, no penalty assessments shall be levied or added to
2 the judgment.

3 (b) If a court grants relief from bail forfeiture, it shall impose a monetary
4 payment as a condition of relief to compensate the people for the costs of returning
5 a defendant to custody pursuant to Section 1305, except for cases where the court
6 determines that in the best interest of justice no costs should be imposed. The
7 amount imposed shall reflect the actual costs of returning the defendant to
8 custody. Failure to act within the required time to make the payment imposed
9 pursuant to this subdivision shall not be the basis for a summary judgment against
10 any or all of the underlying amount of the bail. A summary judgment entered for
11 failure to make the payment imposed under this subdivision is subject to the
12 provisions of Section 1308, and shall apply only to the amount of the costs owing
13 at the time the summary judgment is entered, plus administrative costs and
14 ~~interests~~ interest.

15 (c) If, because of the failure of any court to promptly perform the duties
16 enjoined upon it pursuant to this section, summary judgment is not entered within
17 90 days after the date upon which it may first be entered, the right to do so expires
18 and the bail is exonerated.

19 (d) A dismissal of the complaint, indictment, or information after the default of
20 the defendant shall not release or affect the obligation of the bail bond or
21 undertaking.

22 (e) The district attorney or county counsel shall:

23 (1) Demand immediate payment of the judgment within 30 days after the
24 summary judgment becomes final.

25 (2) If the judgment remains unpaid for a period of 20 days after demand has
26 been made, shall forthwith enforce the judgment in the manner provided for
27 enforcement of money judgments generally. If the judgment is appealed by the
28 surety or bondsman, the undertaking required to be given in these cases shall be
29 provided by a surety other than the one filing the appeal. The undertaking shall
30 comply with the enforcement requirements of Section 917.1 of the Code of Civil
31 Procedure. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of
32 Civil Procedure, jurisdiction of the appeal, and treatment of the appeal as a limited
33 civil case or an unlimited civil case, is governed by Section 1305.5.

34 (f) The right to enforce a summary judgment entered against a bondsman
35 pursuant to this section shall expire two years after the entry of the judgment.

36 **Comment.** Subdivision (a) of Section 1306 is amended to delete language that is obsolete due
37 to trial court unification. Before unification, it was necessary to make clear that a municipal court
38 was authorized to enter summary judgment on a bail forfeiture even though the amount of bail
39 exceeded the jurisdictional limit of the municipal court. See 1977 Cal. Stat. ch. 889, § 3.5;
40 Newman v. Superior Court, 67 Cal. 2d 620, 622, 432 P.2d 972, 63 Cal. Rptr. 284 (1967); see also
41 Department of Consumer Affairs, Analyst's Report SB 1107 (Song), p. 2. Because municipal
42 courts no longer exist and the superior court has no jurisdictional limit, that language is no longer
43 needed.

44 Subdivision (b) is amended to correct an apparent typographical error.

- 1 Subdivision (e)(2) is amended to clarify the jurisdiction and treatment of an appeal from a
2 summary judgment based on a bail bond.
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